

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGEL CABRAL,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

Case No. 1:21-cv-00128-CDB (SS)

ORDER GRANTING PLAINTIFF'S
MOTION FOR REMAND

(Doc. 17)

Plaintiff Angel Cabral ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying his application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the Administrative Record ("AR") and the parties' briefs, which were submitted without oral argument. (Docs. 12, 17, 20, 21).² The Court finds and rules as follows.

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¹ On February 19, 2025, Lee Dudek was named Acting Commissioner of the Social Security Administration. *See* <https://www.ssa.gov/news/press/releases/2025/#2025-02-19> (last visited February 20, 2025). He therefore is substituted as the Defendant in this action. *See* 42 U.S.C. § 405(g) (referring to the "Commissioner's Answer"); 20 C.F.R. § 422.210(d) ("the person holding the Office of the Commissioner shall, in [their] official capacity, be the proper defendant.").

² On February 24, 2021, after both parties consented to the jurisdiction of a magistrate judge for all further proceedings in this action, including trial and entry of judgment, the matter was reassigned pursuant to 28 U.S.C. § 636(c)(1). (Doc. 10).

I. BACKGROUND

A. Administrative Proceedings and ALJ's Decision

On March 19, 2019, Plaintiff applied for child's disability benefits and supplemental security income, alleging disability commencing on March 1, 2018. (Doc. 17 at 1); (Doc. 20 at 2); (AR 24, 324, 326). Plaintiff's claim was initially denied on July 17, 2019, and again upon reconsideration on October 17, 2019. (AR 267, 276, 282). Plaintiff requested a hearing before an Administrative Law Judge on October 24, 2019. (AR 286). The ALJ, Dennis Raterink ("ALJ"), held a telephone hearing where Plaintiff and vocational expert Susian J. Rowe testified on May 29, 2020. (AR 24, 164-199). The ALJ issued an unfavorable decision on August 12, 2020, finding Plaintiff was not disabled. (AR 21-45). The Appeals Council denied Plaintiff's request for review on December 2, 2020, rendering the ALJ's decision as the final decision of the Commissioner. (AR 2-8, 321-323); 42 U.S.C. § 405(h). Plaintiff subsequently filed this action seeking judicial review of the ALJ's decision. (Doc. 1).

In the decision, the ALJ found that Plaintiff had not attained the age of 22 as of the alleged onset date of March 1, 2018, for purposes of child's disability benefits. (AR 27). The ALJ thereafter considered Plaintiff's claims using the five-step sequential evaluation required by C.F.R. § 404.1520(a). (AR 25). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since March 1, 2018, the alleged onset date. (AR 27). The ALJ found that Plaintiff worked after the alleged disability onset date but this work did not rise to the level of substantial gainful activity, which was considered monthly earnings greater than \$1,180.00 in 2018. The ALJ found that Plaintiff earned approximately \$61.00 in the second quarter of 2018 and \$17.00 in the third quarter of 2018, and the record indicated Plaintiff earned \$203.50 from Community Services and Employment Training after he was hired in October 2018. (AR 27).

At step two, the ALJ found that Plaintiff has the following severe impairments: degenerative joint disease of the right knee; obesity; depression; and anxiety. (AR 27). The ALJ determined that Plaintiff's medically determinable severe impairments significantly limit his ability to perform basic work activities as required by SSR 85-28. (AR 27).

At step three, the ALJ found that Plaintiff does not have an impairment or combination of

1 impairments that meets or medically equals the severity of one of the listed impairments in 20
2 C.F.R. Part 404, Subpart P, Appendix 1. (AR 27-30). The ALJ discussed the reasoning as to why
3 each impairment failed to meet the requirements of the listings. The ALJ found Plaintiff's
4 impairments failed to meet listing 1.02 (major dysfunction of a joint) because the record, consistent
5 with his findings, does not demonstrate gross anatomical deformity and chronic joint pain and
6 stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and
7 findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction
8 or ankylosis of the affected joints with: (A) involvement of one major peripheral weight-bearing
9 joint (i.e., hip, knee, or ankle) resulting in inability to ambulate effectively; or (B) involvement of
10 one major peripheral joint in each upper extremity (i.e. shoulder, elbow, or wrist-hand), resulting
11 in the inability to perform fine and gross movements effectively. (AR 27).

12 The ALJ considered the impact of Plaintiff's obese state in determining whether the
13 impairments were of such severity as to meet or medically equal the relevant Listings. (AR 27-28).
14 However, aside from explaining the obesity guidelines, the ALJ did not render a determination as
15 to the impact of Plaintiff's obesity on any body system or mental functioning such that it would
16 medically equal a listing. (AR 28).

17 The ALJ found that the severity of Plaintiff's mental impairments, considered individually
18 and in combination, do not meet or medically equal the criteria of listings 12.04 and 12.06. (AR
19 28). In making this finding, the ALJ considered whether the four broad functional areas of mental
20 functioning listed in the "paragraph B" criteria are satisfied.³ The ALJ considered Plaintiff's

21 ³ The "paragraph B" criteria evaluate mental impairments in the context of four broad areas
22 of functioning: (1) understanding, remembering, or applying information; (2) interacting with
23 others; (3) concentrating, persisting, or maintaining pace; and (4) adapting or managing oneself.
24 20 C.F.R. § Pt. 404, Subpt. P, App. 1. The severity of the limitation a claimant has in each of the
25 four areas of functioning is identified as either "no limitation," "mild," "moderate," "marked," or
26 "extreme." (*Id.*). To satisfy the paragraph B criteria, a claimant must have an "extreme" limitation
27 in at least one of the areas of mental functioning, or a "marked" limitation in at least two of the
28 areas of mental functioning. (*Id.*). An "extreme" limitation is the inability to function
independently, appropriately, or effectively, and on a sustained basis. (*Id.*). A "marked" limitation
is a seriously limited ability to function independently, appropriately, or effectively, and on a
sustained basis. (*Id.*). A "moderate" degree of mental limitation means that functioning in this area
independently, appropriately, effectively, and on a sustained basis is "fair." (*Id.*) And a "mild"
degree of mental limitation means that functioning in this area independently, appropriately,

1 testimony, previous consultative evaluations, and medical history in evaluating the four areas of
 2 functioning. (AR 28-29). As understanding, remembering or applying information, the ALJ found
 3 that Plaintiff has a moderate limitation. As to interacting with others, the ALJ found that Plaintiff
 4 has a mild limitation. As to concentrating, persisting or maintaining pace, the ALJ found that
 5 Plaintiff has a moderate limitation. (AR 29). As to adapting or managing oneself, the ALJ found
 6 that Plaintiff has experienced a mild limitation. Because these mental impairments do not cause at
 7 least two “marked” limitations or one “extreme” limitation, the ALJ determined that the “paragraph
 8 B” criteria are not satisfied.

9 The ALJ further considered the “paragraph C” criteria⁴ and found that the evidence fails to
 10 establish the presence of the “paragraph C” criteria because the record did not indicate: (1) the
 11 evidence of both medical treatment, mental health therapy, psychosocial support(s), or a highly
 12 structured setting that was ongoing and that diminished the symptoms and signs of Plaintiff’s
 13 mental disorder; and (2) a minimal capacity to adapt to changes in his environment or to demands
 14 that are not already part of his daily life. (AR 30). The ALJ found that despite evidence of some
 15 treatment, there is no indication of any inpatient treatment, intensive case management, recent
 16 emergency room visits or counseling, partial hospitalizations, or hospitalizations for his mental
 17 impairments. The ALJ found that Plaintiff reported he is able to attend to personal care tasks
 18 independently, perform some household chores, drive, shop, engage in some hobbies, and manage
 19 his finances. (AR 30).

20 Prior to step four, the ALJ found that Plaintiff has the residual functioning capacity (“RFC”)
 21 to perform light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b) except:

22 [Plaintiff] can stand and walk in combination for no more than two hours per day;
 23 can never climb ladders, ropes, and scaffolds; could do no more than occasional
 24 climbing of ramps and stairs, balancing, stooping, kneeling, crouching, or crawling;

effectively, and on a sustained basis is “slightly limited.” (*Id.*); see *Carlos v. Comm’r of Soc. Sec.*,
 No. 1:21-cv-00517-SAB, 2023 WL 1868870, at *4 n.7 (E.D. Cal. Feb. 9, 2023).

26 ⁴ “Paragraph C,” subsection (1) requires a “highly structured setting that is ongoing that
 27 diminishes the signs and symptoms of [Plaintiff’s] mental disorder.” 20 C.F.R. § Pt. 404, Subpt.
 28 P, App. 1 § 12.04(C)(1). “Paragraph C,” subsection (2) requires that Plaintiff “have minimal
 capacity to adapt to changes in [Plaintiff’s] environment or to demands that are not already part of
 [Plaintiff’s] daily life.” (*Id.* at subsection (C)(2)).

1 and could do no more than occasional work at unprotected heights or with moving
2 mechanical parts. The claimant can understand and remember simple instructions;
3 can maintain concentration, persistence, and pace sufficiently to carry out simple
4 tasks on a sustained basis. He would require brief reminders to follow through on
work assignment changes in the workplace.

5 (AR 30). In considering Plaintiff's symptoms and the extent to which these symptoms can
6 reasonably be accepted as consistent with objective medical evidence and other evidence, the ALJ
7 noted he followed the two-step process as set forth in the 20 C.F.R. 404.1529 and 416.929, and
8 Social Security Ruling ("SSR") 16-3p and considered the medical opinion(s) and prior
9 administrative medical finding(s) in accordance with 20 C.F.R. 404-1520c and 416.920c. First, the
10 ALJ determined whether there is an underlying medically determinable physical or mental
11 impairment, *i.e.*, an impairment or impairments that can be shown by medically acceptable clinical
12 or laboratory diagnostic techniques that could reasonably be expected to produce Plaintiff's
13 symptoms. Second, the ALJ evaluated the intensity, persistence, and limiting effects of Plaintiff's
14 symptoms to determine the extent to which they limit Plaintiff's work-related activities. For this
15 purpose, whenever statements about the intensity, persistence, or functionally limiting effects of
16 symptoms are not substantiated by objective medical evidence, the ALJ considered other evidence
17 in the record to determine if Plaintiff's symptoms limit the ability to do work-related activities.
18 (AR 30).

19 The ALJ then discussed his findings regarding Plaintiff's physical and mental impairments,
20 considering Plaintiff's hearing testimony, medical evidence, treatment history, activities of daily
21 living, and medical opinion evidence. (AR 31-39). In forms completed prior to the hearing that
22 Plaintiff alleged limitations from a knee problem, depression, and anxiety, asserting he experienced
23 pain, panic attacks, anger, frustration, fatigue, and difficulty sleeping, lifting, squatting, bending,
24 standing, walking, sitting, kneeling, climbing stairs, interacting with others, concentrating, and
25 handling stress and changes in routine. In April 2019, Plaintiff claimed he needed to rest for 20 to
26 30 minutes after walking two blocks. Plaintiff attested he did not spend time with others or go out
27 often. Plaintiff did not report difficulty completing tasks, remembering, understanding, following
28 instructions, or getting along with others. (AR 31).

1 The ALJ considered the April 2019 third party function report completed by Ms. Leticia
2 Sanchez (Plaintiff's sister). (AR 31). Specifically, Ms. Sanchez noted Plaintiff was limited by
3 knee pain and anxiety with difficulty sleeping, lifting, squatting, bending, standing, walking,
4 kneeling, and concentrating. Ms. Sanchez stated Plaintiff could not be around people and that he
5 did not go out. Ms. Sanchez noted that Plaintiff did not have difficulty sitting, climbing stairs,
6 completing tasks, remembering, understanding, following instructions, getting along with others,
7 or handling changes in routine. The ALJ noted that as of October 2019, Ms. Sanchez indicated
8 Plaintiff's anxiety and pain were increasing, reporting he appeared sad, depressed, frustrated,
9 stressed, and sometimes cried. (AR 31).

10 The ALJ recounted Plaintiff's hearing testimony. (AR 31). Specifically, Plaintiff alleged
11 limitations from knee problems, obesity, anxiety, and depression with symptoms including pain,
12 stiffness, sadness, crying spells, isolative behavior, frustration, nervousness, and panic attacks with
13 chest pain, with panic attacks occurring twice a week and worse pain with standing or sitting too
14 long. Plaintiff claimed he has never worked for more than a few days due to knee pain, and that
15 he would not be able to climb stairs without pain. The ALJ noted that Plaintiff testified he is 5 feet
16 and 10 inches tall and weighs 381 pounds. Plaintiff attested he has gained weight due to his right
17 knee problems. Plaintiff separately alleged he has difficulty concentrating, including when reading.
18 Plaintiff stated he talks with his mother but indicated he otherwise does not have family or friends
19 with whom he talks. Plaintiff estimated he is able to stand in one spot for a minute before needing
20 to sit down due to pain, sit for no more than 10 to 20 minutes, and lift a gallon of milk. (AR 31).

21 At the hearing, Plaintiff attested that his knee surgery had been scheduled but was postponed
22 due to the COVID-19 pandemic. (AR 31). Plaintiff reported taking medication and in April 2019,
23 Plaintiff claimed medication caused drowsiness. Plaintiff indicated he was not taking medication
24 specifically for pain. In September 2019, Plaintiff indicated he took ibuprofen for pain, which
25 caused dry mouth; however, he otherwise denied having side effects. In October 2019, Ms.
26 Sanchez, on behalf of Plaintiff, noted he was not having medication side effects. Plaintiff attested
27 his medication for pain has run out, noting pain medication also caused side effects. Plaintiff
28 testified he currently takes ibuprofen and indicated his medication for anxiety and depression is

1 somewhat helpful, reporting that with medication, his panic attacks have decreased from daily to
2 twice a week. The ALJ found that Plaintiff noted he has been advised to lose weight. Plaintiff
3 testified an assistive device to aid ambulation has not been prescribed. (AR 31).

4 The ALJ found that Plaintiff's statements concerning the intensity, persistence, and limiting
5 effects of his symptoms were inconsistent with the overall record. (AR 32).

6 As to Plaintiff's alleged significant physical health symptoms, the ALJ found that Plaintiff
7 has some limitations from degenerative joint disease of the right knee. However, the ALJ found his
8 subjective symptomology testimony is inconsistent because the objective medical evidence,
9 including diagnostic imaging studies, did not support the testimony. The ALJ relied on a February
10 2019 x-ray imaging of the right knee that showed tricompartmental degenerative joint disease but
11 with only marginal osteophytosis and small effusion. (*Id.* (citing Ex. 1F/64)). The ALJ also pointed
12 to a September 2019 MRI of the right knee that demonstrated grade I to II chondromalacia of the
13 lateral compartment and a non-displaced flap tear extending from the body into the anterior horn
14 of the lateral meniscus with extrusion of the meniscus but showed Plaintiff's cruciate and collateral
15 ligaments were intact. (*Id.* (citing Ex. 3F/98-99)).

16 Further, the ALJ noted the objective physical examination findings do not support
17 Plaintiff's testimony. The ALJ noted some physical examination findings corroborated Plaintiff's
18 testimony, including: Plaintiff at times reported subjective pain upon palpitation or range of motion
19 testing of the right knee; in April 2019 he had a slight limp favoring the right side; at a May 2019
20 physical therapy evaluation, Plaintiff had an antalgic gait with valgus, swelling, tension, and
21 abnormal range of motion upon examination of the knee; in August 2019, Plaintiff had reduced
22 right knee range of motion due to pain; and during an orthopedic evaluation in December 2019, he
23 had right knee valgus deformity with mild swelling. (AR 32 (citing Ex. 1F, 3F, 5F)).

24 The ALJ noted the physical examination findings also showed neutral or positive findings:
25 Plaintiff presented with normal strength, tone, reflexes, and sensation; Plaintiff often had a normal
26 gait and presented with no acute distress; in August 2018, he had normal range of motion upon
27 examination of the musculoskeletal system; in May 2019, he reported having only mild tenderness
28 with palpation; in June 2019, during a psychological evaluation, he presented with normal motor

1 function and the ability to ambulate without assistance; and in December 2019, he had full range
2 of motion of the right knee. (AR 32 (citing Ex. 1F, 2F, 4F, 5F)).

3 Further, the ALJ discounted Plaintiff's pain testimony in finding the record demonstrates
4 relatively conservative treatment as shown from various records: Plaintiff was prescribed ibuprofen
5 for knee pain; he participated in physical therapy in May 2019, which he claimed he stopped due
6 to pain; and in September and November 2019, he was wearing a knee brace. (AR 32 (citing Ex.
7 1F, 3F, 4F)). The ALJ noted the record does not demonstrate that surgery has been performed or
8 recommended, and that in December 2019, Kenny Thanh Mai, M.D., one of the Plaintiff's medical
9 sources and an orthopedic surgery specialist, noted Plaintiff was not a good surgical candidate and
10 that he should lose weight to reduce pain and prevent arthritis. (AR 32 (citing Ex. 1F-6F)).

11 The ALJ noted that Plaintiff has been advised to lose weight and the record demonstrated
12 fluctuations of weight, but he declined referrals to or did not attend appointments with a nutritionist
13 because he was not ready to see one in October 2018 due to stress and social anxiety. (AR 33 (Ex.
14 1F/3F)). The ALJ noted the record does not document recent or recurrent emergency room
15 evaluations due to uncontrolled pain, nor any evidence that Plaintiff required narcotic pain
16 medication, received knee injections, or a use of or prescription for an assistive device to aid in
17 ambulation. (*Id.* (citing Ex. 1F-6F)).

18 The ALJ considered the medical opinion evidence, namely the consultations of state agency
19 medical consultants S. Gitlin, M.D. in June 2019 (Ex. 1A, 2A) and R. Masters, M.D. in October
20 2019 (Ex. 5A, 6A). (AR 36-37). The ALJ found Dr. Gitlin's function-by-function assessment
21 persuasive given its consistency with the record medical evidence, physical examination findings,
22 Plaintiff's conservative physical treatment, and findings that Plaintiff consistently presented normal
23 findings related to strength, tone, reflexes, and sensation with no acute stress. (AR 36 (citing Ex.
24 1F, 3F, 5F)). The ALJ found mostly persuasive the assessment of Dr. Masters for the same reasons.
25 (AR 37 (citing Ex. 1F, 4F, 5F, 6F)).

26 As to Plaintiff's alleged significant mental health symptoms, the ALJ found that Plaintiff
27 has some limitations from depressive and anxiety disorders. However, the ALJ found his subjective
28 symptomology testimony inconsistent as unsupported by the objective medical evidence. The ALJ

1 noted certain factors corroborating Plaintiff's mental symptomology testimony, to wit: Plaintiff was
2 diagnosed with major depressive disorder and an anxiety disorder, as well as other anxiety disorders
3 including a panic disorder and social phobia; he appeared anxious, with a sad affect observed at
4 times; in February 2019, he was frustrated and worried; however, he acknowledged he had not
5 taken his medication that morning; in June 2019, at which time he stated he had stopped all of his
6 medication, he appeared confused with poor insight and judgment; at a consultative evaluation, he
7 appeared fidgety with bouncing of his leg; he had impaired attention and impaired ability to
8 interpret proverbs; and in July 2019, he had an irritable affect. (AR 33 (citing Ex. 1F, 2F, 3F, 4F)).
9 The ALJ identified portions of Plaintiff's testimony he found inconsistent with the record,
10 specifically: the medical evidence of record does not contain evidence of suicidal ideation,
11 homicidal ideation, or psychosis; during evaluations, he appeared alert and/or oriented, presented
12 with no acute distress, frequently as cooperative and/or pleasant, with intact cognitive function, and
13 had good eye contact. The ALJ noted that during multiple evaluations, Plaintiff denied
14 experiencing loss of interest and feeling down or depressed and at times, he presented with
15 unremarkable findings with regard to mood and affect. (AR 34 (citing Ex 1F, 3F)). The ALJ noted
16 that in July 2018, Plaintiff had good insight and judgment and in August 2018, he denied
17 experiencing daytime fatigue. (AR 34 (citing Ex. 1F)).

18 The ALJ further noted as inconsistent with Plaintiff's mental health testimony that: in June
19 2019, during a psychological consultative evaluation, Plaintiff presented as friendly with good
20 grooming, appropriate attire, and normal facial expressions; he was a reliable historian and
21 interacted appropriately with the examiner with no bizarre behavior observed; he presented with
22 normal speech and intact intelligence; he had adequate concentration, memory, and fund of
23 knowledge; he had unremarkable thought content with intact insight, judgment, and thought
24 processes, as well as intact abilities with regard to abstraction and performance of calculations; and
25 he reported having good relationships with his siblings. (AR 34 (citing Ex. 2F)). The ALJ noted
26 that in July 2019, Plaintiff had clear speech with good insight and judgment and in December 2019,
27 he indicated he did not have loss of interest or uncontrollable worry. (AR 34 (citing Ex. 3F, 5F)).

28 The ALJ found Plaintiff's mental health treatment history has been quite conservative other

1 than the records showing Plaintiff sought emergent or urgent evaluation of anxiety with chest pain
2 at or around April and June 2018. (AR 34 (citing Ex. 1F, 2F)). In support, the ALJ noted that:
3 Plaintiff has been prescribed medication for depression and anxiety, which was adjusted at times;
4 there is no indication of any inpatient treatment, intensive case management, partial
5 hospitalizations, or hospitalizations for his mental impairments; there is no evidence of recent
6 emergency room evaluations or urgent care visits due to symptoms of uncontrolled anxiety or
7 depression; although Plaintiff reported at the June 2019 consultative evaluation that he attended
8 counseling, the medical evidence of record does not document recent counseling; he frequently
9 declined referrals to behavioral health, initially stating he was not ready although he later claimed
10 this was due to anxiety; although the record indicates he was referred to a psychiatrist on multiple
11 occasions, he declined or did not show up to appointments with no demonstrated treatment with a
12 psychiatrist; he at times was not fully compliant with recommended treatment such that he stopped
13 taking medication; and in June and July 2019, Mercedeh Deyhim, PA-C, one of Plaintiff's
14 providers, noted she had a long talk with him regarding the need for compliance with treatment.
15 (AR 34 (citing Ex. 1F-6F)).

16 Further noting Plaintiff's inconsistent mental health testimony, the ALJ found the record
17 demonstrates Plaintiff reported improvements in mental health symptoms with treatment. The ALJ
18 noted examples: in May 2018, Plaintiff noted he had good results from a selective serotonin
19 reuptake inhibitor (SSRI); in August 2018, he reported improvement in anxiety with medication,
20 noting he had no recent panic attacks or emergency room visits; in November 2018, he reported
21 improvement following an adjustment to his medication regimen in October 2018, noting he had
22 no panic attacks since that time; in January 2019, he stated that a medication change helped
23 significantly; and in February 2019, he noted his current medication regimen was the best he had
24 so far. (AR 34-35 (citing Ex. 1F)). The ALJ considered Plaintiff's allegations of medication side
25 effects in the assessed RFC, noting that: Plaintiff reported side effects including nausea, abdominal
26 pain, anxiety, panic, and drowsiness, which the record indicated his medication regimen was
27 changed in response thereto; the record showed he appeared alert and oriented with intact cognitive
28 function during evaluations; the medical record does not document ongoing or frequent reports of

1 nausea or abdominal pain due to medication; he had cooperative behavior and good eye contact
2 with no acute distress during an evaluation in June 2019 despite complaints of increased anxiety
3 with medication; and despite reporting an increase in panic attacks with Paxil in July 2019, he
4 presented with no acute distress, with the record not documenting urgent care or emergency room
5 visits at or around that time due to panic attacks. (AR 35 (citing Ex. 1F-6F)). The ALJ therefore
6 found that greater limitations due to medication side effects was not supported. (AR 35).

7 The ALJ then considered the medical opinion evidence, namely the consultations of state
8 agency psychological consultants Tim Schumacher, Ph.D. in July 2019 (Ex. 1A, 2A) and J.
9 Collado, M.D. in October 2019 (Ex. 5A, 6A). (AR 37). The ALJ found the assessments of both
10 state consultants, which provided the same limitations, partially persuasive given their assessed
11 limitations of Plaintiff's interacting with others as moderately limited was not consistent with the
12 overall medical record. The ALJ also considered the June 2019 observations of consultative
13 psychologist G. Seward, Psy.D. (AR 38 (citing Ex. 2F)). The ALJ noted that Dr. Seward had the
14 opportunity to examine Plaintiff on one occasion but nonetheless found his assessment not
15 consistent with the overall medical record and found it not persuasive. The ALJ reasoned that
16 Plaintiff presented some positive findings, however, he: frequently had unremarkable findings with
17 regard to orientation, alertness, cognitive function, behavior, attitude, and eye contact, with good
18 insight and judgment observed on multiple occasions; no evidence of suicidal ideation, homicidal
19 ideation, or psychosis; and the assessment was not consistent with the longitudinal treatment record
20 such that the record shows relatively conservative treatment. (AR 38 (citing Ex. 1F-6F)).

21 As to Plaintiff's alleged issues with functioning and activities of daily living, the ALJ found
22 that: in April 2019, Plaintiff indicated fatigue occasionally affected his ability to prepare meals and
23 that anxiety and pain affected his ability to perform hobbies; he did not drive, but reported this was
24 due to the lack of a driver's license; he claimed he did not spend time with others and that he did
25 not go out often; at the hearing, Plaintiff asserted he has pain when driving more than 20 minutes
26 and when taking a shower. (AR 35 (citing Ex. 5F, 6F)). The ALJ noted the third-party report of
27 Ms. Sanchez described similar limitations, including in October 2019, that Plaintiff could not
28 perform chores or sports. (AR 35 (citing Ex. 10F)). The ALJ noted the following inconsistencies:

1 in November 2018, Plaintiff indicated he was walking daily for exercise; in April 2019, he denied
2 having problems performing personal care tasks; he reported he prepared meals daily; he stated he
3 washed laundry and mowed the lawn; he noted he could go out alone, shop in stores, and handle
4 money; he reported he watched television and played videogames. (AR 35 (citing Ex. 6E)). The
5 ALJ also found certain of Ms. Sanchez's statements inconsistent with Plaintiff's testimony: she
6 stated Plaintiff could perform personal care tasks without difficulty or need for reminders and he
7 prepared simple meals daily, indicating there had been no change in his cooking habits since the
8 onset of his conditions; that he washed laundry, cleaned his room, watched television, and played
9 videogames; and that he could go out alone, shop in stores, and handle money. (AR 35 (citing Ex.
10 5E, 6E)). The ALJ further noted that: in June 2019, Plaintiff stated he was able to manage funds
11 and make change, noting he did not need help preparing meals; he reported he was independent in
12 perform basic activities of daily living; and at the hearing, Plaintiff indicated he has a driver's
13 license and that he can drive short distances. (AR 35 (citing Ex. 2F)).

14 The ALJ concluded that Plaintiff's residual functional capacity (RFC) assessment is
15 supported by the overall record. (AR 38). The ALJ recognized that Plaintiff's impairments
16 imposed some limitations on his functioning and stated that the RFC was adjusted to accommodate
17 those limitations. The ALJ stated that due to degenerative joint disease of the right knee and obesity
18 with subjective complaints of pain and objective findings including a valgus deformity, reduced
19 range of motion, and occasional abnormalities of gait, he accorded exertional, postural, and
20 environmental restrictions. (*Id.* (citing EX. 1F; 3F; 5F)). He also accorded restrictions limiting
21 Plaintiff to understanding and remembering simple instructions and carrying out simple tasks with
22 brief reminders to follow through on workplace assignment changes based on Plaintiff's alleged
23 symptoms, treatment record, and examination findings, including abnormalities of mood and affect
24 with poor insight and judgment, impaired attention and ability to interpret proverbs, and fidgeting
25 observed in June 2018. (*Id.* (citing Ex. 1F-6F)).

26 At step four, the ALJ found that Plaintiff has no past relevant work. At step five, based on
27 the testimony of the vocational expert, and considering Plaintiff's age, education, work experience,
28 and RFC, the ALJ concluded that Plaintiff could perform jobs that exist in the national economy

1 such as an inspector, bench assembler, and machine tender. Accordingly, the ALJ concluded that
2 a finding of “not disabled” is therefore appropriate under the five-step sequential evaluation
3 required by C.F.R. § 404.1520(a). (AR 40).

4 After the Appeals Council denied review, Plaintiff initiated this action, filing the instant
5 motion for remand on April 25, 2022. (Doc. 17). Defendant filed an opposition on July 12, 2022.
6 (Doc. 21). Plaintiff filed a reply on July 28, 2022. (Doc. 21).

7 **B. Medical Record and Hearing Testimony**

8 The relevant hearing testimony and medical record were reviewed by the Court and will be
9 referenced below as necessary to this Court’s decision.

10 **II. LEGAL STANDARD**

11 A district court’s review of a final decision of the Commissioner of Social Security is
12 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the
13 Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is
14 based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence”
15 means “relevant evidence that a reasonable mind might accept as adequate to support a
16 conclusion.” (*Id.* at 1159) (quotation and citation omitted). Stated differently, substantial evidence
17 equates to “more than a mere scintilla[,] but less than a preponderance.” (*Id.*) (quotation and
18 citation omitted). “It is such relevant evidence as a reasonable mind might accept as adequate to
19 support a conclusion.” *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In determining
20 whether the standard has been satisfied, a reviewing court must consider the entire record as a whole
21 rather than searching for supporting evidence in isolation. (*Id.*).

22 The court will review only the reasons provided by the ALJ in the disability determination
23 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,
24 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its
25 judgment for that of the Commissioner. “The court will uphold the ALJ’s conclusion when the
26 evidence is susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d
27 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s decision on account
28 of an error that is harmless. (*Id.*). An error is harmless where it is “inconsequential to the [ALJ’s]

1 ultimate nondisability determination.” (*Id.*) (quotation and citation omitted). The party appealing
2 the ALJ’s decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
3 *Sanders*, 556 U.S. 396, 409-10 (2009).

4 A claimant must satisfy two conditions to be considered “disabled” and eligible for benefits
5 within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any
6 substantial gainful activity by reason of any medically determinable physical or mental impairment
7 which can be expected to result in death or which has lasted or can be expected to last for a
8 continuous period of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the
9 claimant’s impairment must be “of such severity that he is not only unable to do his previous
10 work[,] but cannot, considering his age, education, and work experience, engage in any other kind
11 of substantial gainful work which exists in the national economy.” 42 U.S.C. §
12 1382c(a)(3)(B).

13 The Commissioner has established a five-step sequential analysis to determine whether a
14 claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the
15 Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant
16 is engaged in “substantial gainful activity,” the Commissioner must find that the claimant is not
17 disabled. 20 C.F.R. § 416.920(b).

18 If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step
19 two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20 C.F.R.
20 § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of impairments
21 which significantly limits [his or her] physical or mental ability to do basic work activities,” the
22 analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not
23 satisfy this severity threshold, however, the Commissioner must find that the claimant is not
24 disabled. (*Id.*).

25 At step three, the Commissioner compares the claimant’s impairment to impairments
26 recognized by the Commissioner to be so severe as to preclude a person from engaging in
27 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more
28 severe than one of the enumerated impairments, the Commissioner must find the claimant disabled

1 and award benefits. 20 C.F.R. § 416.920(d).

2 If the severity of the claimant's impairment does not meet or exceed the severity of the
3 enumerated impairments, the Commissioner must pause to assess the claimant's "residual
4 functional capacity." Residual functional capacity (RFC), defined generally as the claimant's
5 ability to perform physical and mental work activities on a sustained basis despite his or her
6 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

7 At step four, the Commissioner considers whether, in view of the claimant's RFC, the
8 claimant is capable of performing work that he or she has performed in the past (past relevant
9 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work,
10 the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the
11 claimant is incapable of performing such work, the analysis proceeds to step five.

12 At step five, the Commissioner considers whether, in view of the claimant's RFC, the
13 claimant is capable of performing other work in the national economy. 20 C.F.R. §
14 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational
15 factors such as the claimant's age, education, and past work experience. (*Id.*). If the claimant is
16 capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20
17 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis
18 concludes with a finding that the claimant is disabled and is therefore entitled to benefits. (*Id.*).

19 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,
20 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the
21 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such
22 work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran*
23 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

24 **III. ISSUES AND ANALYSIS**

25 Plaintiff raises two issues in his motion to vacate and remand: (1) the ALJ erred by finding
26 the opinion from Dr. Seward "not persuasive" without proper consideration of the supportability
27 and consistency of the opinion with the record; and (2) the ALJ failed to include work-related
28 limitations in the RFC consistent with the nature and intensity of Plaintiff's limitations and failed

1 to offer any reason for discounting Plaintiff's symptoms. (Doc. 17 at 1).

2 **A. Whether the ALJ Erred in Finding the Opinion from Dr. Seward Not**
 3 **Persuasive Without Proper Consideration of the Supportability and**
 4 **Consistency of the Opinion with the Record**

5 *1. Governing Authority*

6 Because Plaintiff applied for benefits after March 27, 2017, his claim is governed by the
 7 agency's newest regulations governing an ALJ's evaluation of medical opinions. 20 C.F.R. §
 8 416.920c. Under the new regulations, the Commissioner does "not defer or give any specific
 9 evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative
 10 medical findings (s), including those from [a claimant's] medical sources." 20 C.F.R. §§
 11 404.1520c(a), 416.920c(a). Thus, the regulations require an ALJ to apply the same factors to all
 12 medical sources when considering medical opinions and no longer mandate particularized
 13 procedures that the ALJ must follow in considering opinions from treating sources. *See* 20 C.F.R.
 14 § 404.1520c(b) (the ALJ "is not required to articulate how [he] considered each medical opinion or
 15 prior administrative medical finding from one medical source individually."); *Trevizo v. Berryhill*,
 16 871 F.3d 664, 675 (9th Cir. 2017).

17 Instead, "[w]hen a medical source provides one or more medical opinions or prior
 18 administrative medical findings, [the ALJ] will consider those medical opinions or prior
 19 administrative medical findings from that medical source together using" the following factors: (1)
 20 supportability; (2) consistency; (3) relationship with the claimant; (4) specialization; [and] (5) other
 21 factors that "tend to support or contradict a medical opinion or prior administrative medical
 22 finding." 20 C.F.R. §§ 404.1520c(a), (c)(1)-(5). The most important factors to be applied in
 23 evaluating the persuasiveness of medical opinions and prior administrative medical findings are
 24 supportability and consistency. 20 C.F.R. §§ 404.1520c(a), (b)(2). Regarding the supportability
 25 factor, the regulation provides that the "more relevant the objective medical evidence and
 26 supporting explanations presented by a medical source are to support his or her medical opinion(s),
 27 the more persuasive the medical opinions ... will be." 20 C.F.R. § 404.1520c(c)(1). In other words,
 28 "[s]upportability means the extent to which a medical source supports the medical opinion by

1 explaining the ‘relevant ... objective medical evidence.’” *Woods v. Kijakazi*, 32 F.4th 785, 791-92
2 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(c)(1)). Regarding the consistency factor, the “more
3 consistent a medical opinion(s) is with the evidence from other medical sources and nonmedical
4 sources in the claim, the more persuasive the medical opinion(s) ... will be.” 20 C.F.R. §
5 404.1520c(c)(2):

6 The ALJ must explain in his decision how persuasive he finds a medical opinion and/or a
7 prior administrative medical finding based on these two factors. 20 C.F.R. § 404.1520c(b)(2). The
8 ALJ “may, but [is] not required to, explain how [he] considered the [other remaining factors],”
9 except when deciding among differing yet equally persuasive opinions or findings on the same
10 issue. 20 C.F.R. § 404.1520c(b)(2)-(3). Further, the ALJ is “not required to articulate how [he]
11 considered evidence from nonmedical sources.” 20 C.F.R. § 404.1520c(d). Nonetheless, the Court
12 must determine whether the ALJ adequately explained how he considered the supportability and
13 consistency factors relative to medical opinions and whether the reasons were free from legal error
14 and supported by substantial evidence. *Woods*, 32 F.4th at 792-93.

15 2. *Dr. Seward’s Opinion*

16 On June 27, 2019, Plaintiff attended a comprehensive mental status evaluation with G.
17 Seward, Psy.D. (“Dr. Seward”), a consultative psychologist. (AR 494-97). Dr. Seward observed
18 Plaintiff presented in a friendly manner and interacted appropriately throughout the evaluation.
19 (AR 494). Plaintiff endorsed mental health symptoms of depression and anxiety with the inability
20 to focus, frustration, needing “some fresh air all the time[,]” and having trouble with “a lot of people
21 being in the same room.” (*Id.*). Plaintiff reported taking two trips to the hospital for a “panic attack
22 (chest pains).” (*Id.*). Plaintiff reported experiencing these psychiatric symptoms for over a year,
23 which “occur on a daily basis” at a severity “in the moderate to severe range” and have gotten
24 “worse and more persistent.” (*Id.*). Plaintiff reported having attended counseling and having been
25 prescribed psychiatric medications, including a current prescription of Paxil. (AR 495). Plaintiff
26 reported that he was feeling a “little anxious” at that time and he faced limitations with daily living
27 resulting from “psychiatric, emotional, and/or cognitive issues” that have “ma[de] it hard to focus
28 or be around others.” (AR 494-95). Plaintiff reported no history of suicide attempts, prior

1 psychiatric hospitalizations, self-harm, or being a danger to others, and denied current suicidal or
2 homicidal ideation. (AR 495). Plaintiff reported current psychological stressors of financial
3 hardship and mental health status. (*Id.*).

4 On examination, Plaintiff: appeared casually dressed with good grooming; cooperative
5 attitude; good eye contact; normal speech; alert; fully oriented; and intelligence intact. (AR 495-
6 96). Plaintiff's motor activity was fidgety with frequent bouncing of his leg, had impaired attention,
7 and had adequate concentration, knowledge, and memory. (AR 496). Plaintiff had intact
8 abstraction, calculation, judgment, and insight, but his ability to interpret proverbs was impaired.
9 (*Id.*). Plaintiff's mood and affect were anxious and had unremarkable thought content. (*Id.*). Dr.
10 Seward rendered diagnostic impressions of "[m]ajor depressive disorder, recurrent, unspecified"
11 and "[a]nxiety disorder, unspecified[.]" (*Id.*).

12 Dr. Seward opined Plaintiff is mildly limited in his ability to understand, remember, and
13 perform simple written and oral instructions and is moderately limited as to complex instructions.
14 (AR 497). Dr. Seward opined Plaintiff is markedly limited in his ability to do the following:
15 maintain regular attendance in the workplace; perform work activities on a consistent basis;
16 perform work activities without special or additional supervision; complete a normal workday or
17 workweek without interruptions from his psychiatric condition; interact with coworkers and with
18 the public, and deal with the usual stress encountered in a competitive work environment. (*Id.*).
19 Dr. Seward explained Plaintiff's limitations are due to the cognitive and functional deficits
20 associated with his mood disorder. (*Id.*).

21 Dr. Seward opined it appears Plaintiff's mental health symptoms may be chronic in nature
22 and "may not abate on its own within a one-year period" given the current diagnosis and past mental
23 health involvement. (*Id.*). Dr. Seward further opined Plaintiff "may benefit from starting therapy
24 and continuing psychiatric medication to address and manage current mental health symptoms."
25 (*Id.*).

26 3. Parties' Contentions

27 Plaintiff argues that the ALJ erred in finding the opinion of Dr. Seward not persuasive where
28 the ALJ failed to acknowledge the opinion is supported by Dr. Seward's positive examination

1 findings and is consistent with the record as a whole. (Doc. 17 at 9). First, Plaintiff asserts the
2 ALJ's finding is unsupported by substantial evidence because the ALJ discussed only the evidence
3 consistent with his conclusion and failed to discuss or reconcile conflicting findings when
4 evaluating the supportability of Dr. Seward's opinion. (*Id.*). Second, Plaintiff contends the ALJ
5 failed to show the opinion was inconsistent when the ALJ identified normal findings to "cancel
6 out" findings of Plaintiff's mental abnormalities in the record. (*Id.*). Plaintiff further argues the
7 ALJ erred in finding the opinion inconsistent when he erroneously found Plaintiff's mental health
8 care was conservative. (*Id.*).

9 Defendant asserts that the ALJ reasonably found Dr. Seward's opinion not persuasive
10 because the opinion is "not supported by his own examination findings" and conflicted with other
11 evidence in the record. (Doc. 20 at 6, 7). Defendant contends the ALJ pointed out that Plaintiff
12 had a number of "unremarkable findings" throughout the record. (*Id.* at 7). Defendant contends
13 the ALJ found the opinion inconsistent because the record "shows *relatively* conservative
14 treatment." (*Id.*). Defendant contends that even if the ALJ mischaracterized Plaintiff's mental
15 health treatment as conservative, the Court should affirm because the ALJ "provided other valid
16 reasons." (*Id.* at 8).

17 In reply, Plaintiff asserts that the ALJ failed to meet the substantial evidence threshold
18 because he discussed only the findings consistent with his conclusion and "wholly ignore[d] the
19 abnormal findings[.]" inaccurately suggested the examination findings were "entirely normal[.]"
20 and otherwise failed to discuss or reconcile the conflicting findings. (Doc. 21 at 2).

21 4. Analysis

22 The ALJ found Dr. Seward's assessment was "not supported by his own examination
23 findings" because the assessment observed a number of positive findings, including "appropriate
24 attire, good grooming, a friendly manner, a cooperative attitude, [and] good eye contact[.]" (AR
25 38). However, as Plaintiff correctly argues, the ALJ failed to articulate how or why any of these
26 positive findings did not support Dr. Seward's assessed limitations or otherwise explain the
27 relevancy of those findings to the objective medical evidence. In a single-sentence observation,
28 the ALJ concludes that certain positive findings by Dr. Seward undermine his assessment of marked

1 limitations in four functional areas, but the ALJ does not explain how Dr. Seward's other adverse
2 findings fail to support his underlying opinions and conclusions. *See Woods*, 32 F.4th at 791-92;
3 *see also Reddick*, 157 F.3d at 725 (ALJ must "set forth his own interpretations and explain why
4 they, rather than the doctors, are correct."). The ALJ therefore failed to consider the supportability
5 of Dr. Seward's assessment in finding his opinion not persuasive.

6 Regarding consistency, the ALJ concluded that Dr. Seward's assessment is not consistent
7 with the overall medical evidence by noting that though Plaintiff presented some positive findings,
8 those findings were inconsistent with Plaintiff's "unremarkable findings with regard to orientation,
9 alertness, cognitive function, behavior, attitude, and eye contact, with good insight and judgment
10 observed on multiple occasions." (AR 38). This does not constitute substantial evidence of any
11 material inconsistency between the positive findings and the neutral findings of Dr. Seward's
12 assessment. *See Johnson v. Berryhill*, No. C17-5623-MAT, 2018 WL 3008879, at *4 (W.D. Wash.
13 June 15, 2018) ("[T]he existence of other normal findings does not negate Dr. Wingate's
14 examination."); *William B. v. Saul*, 2:19-CV-00261-JTR, 2020 WL 4318755, at *3 (E.D. Wash.
15 July 27, 2020) ("Simply because Plaintiff did well on portions of the mental status exam does not
16 negate the other abnormal findings, as well as Dr. Islam-Zwart's professional assessments.").

17 Additionally, the ALJ failed to show how or why any of Dr. Seward's findings are
18 inconsistent with any other medical source in the record, such as the other psychological medical
19 opinions he found persuasive. *Woods*, 32 F.4th at 792. The ALJ did not acknowledge the
20 consistency of Dr. Seward's findings with that of Dr. Schumacher or Dr. Collado, including similar
21 findings that Plaintiff had a mild limitation in understanding, remembering, or applying
22 information, appeared cooperative and/or friendly, had good eye contact, and other positive
23 findings. The Court also notes the ALJ discounted Dr. Schumacher and Dr. Collado's finding that
24 Plaintiff had a moderate limitation in interacting with others for the same reason the ALJ discounted
25 Dr. Seward's finding of a marked limitation as to same—because those assessments were not
26 consistent with "the overall record." Moreover, the ALJ simply states Dr. Seward's assessment
27 showed "[t]here is no evidence of suicidal ideation, homicidal ideation, or psychosis" without
28 pointing to how that finding is inconsistent with the record. Indeed, that finding is consistent with

1 the ALJ's account of Plaintiff's mental health treatment history, symptomology testimony, and
2 overall record.

3 Without explanation, the ALJ concludes Dr. Seward's assessment is inconsistent with
4 Plaintiff's "longitudinal treatment record such that the record shows relatively conservative
5 treatment[.]" (AR 38). The ALJ noted earlier he considered Plaintiff's mental health treatment
6 "quite conservative" because Plaintiff's records lacked evidence of certain treatment methods or
7 more serious care, as there was no indication of any inpatient treatment, intensive case
8 management, partial hospitalizations, or hospitalizations for Plaintiff's mental impairments, nor
9 any evidence of emergency room evaluations or urgent care visits due to his alleged symptoms.
10 (AR 34). However, the ALJ found that Plaintiff indeed sought emergent or urgent evaluation of
11 anxiety with chest pain at or around April and June 2018, and he acknowledged that Plaintiff has
12 been prescribed medication for depression and social anxiety that "was adjusted at times." (AR
13 34). Indeed, Plaintiff has been prescribed medication for social anxiety, depression, anxiety, and
14 panic disorder and at times had adjusted (*i.e.*, increased) doses over time and other medication
15 management practices. (AR 35 (citing Ex. 1F/17, 34, 43 (medication doses), 44 (regimen
16 summary), 46 (prescribed combinations of Buspirone and Citalopram for anxiety disorder and
17 Celexa and Buspar for panic disorder), 53 (SSRI and hydroxyzine for panic disorder)).

18 The Court acknowledges some courts have found under certain circumstances that
19 medications like those prescribed to Plaintiff here constitute conservative treatment. *See Garcia v.*
20 *Comm'r of Soc. Sec.*, No. 1:21-cv-00068-SAB, 2022 WL 2110709, at *8 (E.D. Cal. June 10, 2022)
21 (citing cases). Other courts have found treatment with such medications was not conservative. *See*
22 *Mason v. Colvin*, No. 1:12-cv-00584-GSA, 2013 WL 5278932, at *6 (E.D. Cal. Sept. 18, 2013)
23 (treatment with anti-depressants and anti-psychotic medications was not conservative); *accord*
24 *Wilson v. Berryhill*, No. CV 17-06967-AFM, 2018 WL 6321629, at *4 (C.D. Cal. July 9, 2018)
25 ("As Plaintiff correctly points out, courts have recognized that treatment involving several of these
26 medications [including Paxil and Buspirone] is not 'conservative.'"); *Carden v. Colvin*, No. CV
27 13-3856-E, 2014 WL 839111, at *3 (C.D. Cal. Mar. 4, 2014) (the prescription of medications such
28 as Zoloft and Seroquel is generally recognized as not conservative); *Odisian v. Colvin*, No. CV 12-

1 9521-SP, 2013 WL 5272996, at *8 (C.D. Cal. Sept. 8, 2013) (treatment with psychotropic
2 medications and sessions with a psychologist was not conservative). Here, the ALJ failed to
3 sufficiently explain the conservative treatment finding as to Plaintiff's use of these medications,
4 thus rendering the ALJ's finding unsupported by substantial record evidence. *See Wheeler v.*
5 *Berryhill*, No. 3:16-CV-01623-AA, 2017 WL 3478483, at *4 (D. Or. Aug. 11, 2017) (finding ALJ's
6 characterization of plaintiff's course of treatment as "routine and conservative" not supported by
7 substantial evidence because "it is not possible to evaluate whether those treatments conflict with
8 plaintiff's allegations about the severity of his symptoms because the ALJ never specified which
9 symptom statements conflict with plaintiff's course of treatment."); *Maria B. v. Saul*, No. EDCV
10 20-192-KK, 2020 WL 11884826, at *7 (C.D. Cal. Oct. 30, 2020) ("the ALJ failed to provide any
11 evidence or discussion in support of her characterization of Plaintiff's mental health treatment as
12 conservative."); *Emme J. C. v. Saul*, No. EDCV 19-02186 PVC, 2021 WL 3730165, at *5 (C.D.
13 Cal. Mar. 23, 2021) (same). Thus, the ALJ's unsupported finding that Plaintiff's mental health
14 treatment was, in fact, conservative, undermines his conclusion that Dr. Seward's opinion is
15 unpersuasive given its purported lack of consistency.

16 Separately, the Court notes that two of the relevant factors—relationship with claimant and
17 specialization—favor Dr. Seward's opinion as he is the only psychological consultant that
18 personally examined Plaintiff among the opinions the ALJ considered, and the ALJ acknowledges
19 Dr. Seward is "a specialist in the field of psychology." (AR 38); *Boeche v. Kijakazi*, No. 23CV918-
20 RBM (BLM), 2024 WL 3430576, at *7 (S.D. Cal. July 15, 2024); *see Veronica L. v. Comm'r of*
21 *Soc. Sec.*, No. 1:23-cv-00107-JR, 2024 WL 399049, at n.2 (D. Or., Feb. 2, 2024) ("[a]s the Ninth
22 Circuit recently explained, [u]nder the revised regulations ... a medical source's relationship with
23 the claimant is still relevant when assessing the persuasiveness of the source's opinion."). Although
24 not required (*see* 20 C.F.R. § 404.1520c(b)(2)-(3)), the ALJ's acknowledgement of but failure to
25 reconcile Dr. Seward's specialization further undermines the foundation of his assessment of
26 persuasiveness of Dr. Seward's opinion.

27 Because the ALJ failed to adequately address how Dr. Seward's opinion lacked
28 supportability or consistency, or provide any other reason to discount the opinion, he improperly

found the opinion not persuasive. Therefore, the ALJ's finding that Dr. Seward's opinion was not persuasive is not supported by substantial evidence.

B. Whether the ALJ Failed to Include Work-Related Limitations in the RFC Consistent with the Nature and Intensity of Plaintiff's Limitations and Improperly Rejected Plaintiff's Subjective Symptom Testimony

1. Governing Authority

As discussed above, a claimant's RFC is "the most [the claimant] can still do despite [his or her] limitations." 20 C.F.R. §§ 404.1545(a), 416.945(a). The RFC assessment is an administrative finding based on all relevant evidence in the record, not just medical evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005). In determining the RFC, the ALJ must consider all limitations, severe and non-severe, that are credible and supported by substantial evidence in the record. (*Id.*). However, an ALJ's RFC findings need only be consistent with relevant assessed limitations and not identical to them. *See Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th Cir. 2010) ("Although the ALJ rejected any implication in Dr. Koogler's evaluation that Turner was disabled, he did incorporate Dr. Koogler's observations into his residual functional capacity determination. ... These limitations were entirely consistent with Dr. Koogler's limitation."). Ultimately, a claimant's RFC is a matter for the ALJ to determine. *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001).

Plaintiff argues the ALJ erred in assessing her RFC because he failed to set forth any clear and convincing reasons for discounting Plaintiff's symptoms. (Doc. 17 at 10). The ALJ is responsible for determining credibility,⁵ resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). A claimant's statements of pain or other symptoms are not conclusive evidence of a physical or mental impairment or disability. 42 U.S.C. § 423(d)(5)(A); *see* SSR 16-3p, 2017 WL 5180304, at *2 ("an individual's

⁵ SSR 16-3p applies to disability applications heard by the agency on or after March 28, 2016. Ruling 16-3p eliminated the use of the term "credibility" to emphasize that subjective symptom evaluation is not "an examination of an individual's character but an endeavor to "determine how symptoms limit [the] ability to perform work-related activities." SSR 16-3p, 2017 WL 5180304, at *3.

statements of symptoms alone are not enough to establish the existence of a physical or mental impairment or disability”); *see also Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007) (“An ALJ is not required to believe every allegation of disabling pain or other non-exertional impairment.”) (internal quotation marks and citation omitted); *Molina v. Astrue*, 674 F.3d 1104, 1104 (9th Cir. 2012) (same), *superseded on other grounds by* 20 C.F.R. § 404.1502(a). Determining whether a claimant’s testimony regarding subjective pain or symptoms is credible requires the ALJ to engage in a two-step analysis. *Molina*, 674 F.3d at 1112. The ALJ must first determine if “the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged.” *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (internal punctuation and citations omitted). This does not require the claimant to show that his impairment could be expected to cause the severity of the symptoms that are alleged, but only that it reasonably could have caused some degree of symptoms. *Smolen v. Chater*, 80 F.3d 1273, 1282 (9th Cir. 1996).

If the first step is met and there is no evidence of malingering, “the ALJ must provide ‘specific, clear and convincing reasons for’ rejecting the claimant’s testimony.” *Treichler v. Comm’r of Soc. Sec.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (*quoting Smolen*, 80 F.3d at 1281). *See Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1160 (9th Cir. 2008) (noting an adverse credibility finding must be based on “clear and convincing reasons”). The ALJ must make findings that support this conclusion, and the findings must be sufficiently specific to allow a reviewing court to conclude the ALJ rejected the claimant’s testimony on permissible grounds and did not arbitrarily discredit the claimant’s testimony. *Moisa v. Barnhart*, 367 F.3d 882, 885 (9th Cir. 2004).

The Ninth Circuit does “not require ALJs to perform a line-by-line exegesis of the claimant’s testimony, nor do they require ALJs to draft dissertations when denying benefits.” *Stewart v. Kijakazi*, No. 1:22-cv-00189-ADA-HBK, 2023 WL 4162767, at *5 (E.D. Cal. Jun. 22, 2023), F&R adopted, 2023 WL 5109769 (E.D. Cal. Aug. 8, 2023); *see Record v. Kijakazi*, No. 1:22-cv-00495-BAM, 2023 WL 2752097, at *4 (E.D. Cal. Mar. 31, 2023) (“Even if the ALJ’s decision is not a model of clarity, where the ALJ’s ‘path may reasonably be discerned,’ the Court will still defer to the ALJ’s decision.”) (*quoting Wilson v. Berryhill*, 757 Fed. Appx. 595, 597 (9th

1 Cir. 2019)). “The standard isn’t whether our court is convinced, but instead, whether the ALJ’s
 2 rationale is clear enough that it has the power to convince.” *Smartt v. Kijakazi*, 53 F.4th 489, 494
 3 (9th Cir. 2022) (the clear and convincing standard requires an ALJ to show his work).

4 The ALJ may consider numerous factors in weighing a claimant’s credibility, including “(1)
 5 ordinary techniques of credibility evaluation, such as the claimant’s reputation for lying, prior
 6 inconsistent statements concerning the symptoms, and other testimony by the claimant that appears
 7 less than candid; (2) unexplained or inadequately explained failure to seek treatment or to follow a
 8 prescribed course of treatment; and (3) the claimant’s daily activities.” *Smolen*, 80 F.3d at 1284.
 9 In evaluating the credibility of symptom testimony, the ALJ must also consider the factors
 10 identified in SSR 16-3P. *Id.* (citing *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991)). Accord
 11 *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009). These factors include:

12 (1) Daily activities; (2) The location, duration, frequency, and intensity of pain or
 13 other symptoms; (3) Factors that precipitate and aggravate the symptoms; (4) The
 14 type, dosage, effectiveness, and side effects of any medication an individual takes
 15 or has taken to alleviate pain or other symptoms; (5) Treatment, other than
 16 medication, an individual receives or has received for relief of pain or other
 17 symptoms; (6) Any measures other than treatment an individual uses or has used to
 18 relieve pain or other symptoms (*e.g.*, lying flat on his or her back, standing for 15
 19 to 20 minutes every hour, or sleeping on a board); and (7) Any other factors
 20 concerning an individual’s functional limitations and restrictions due to pain or
 21 other symptoms.

22 SSR 16-3P, 2017 WL 5180304, at *7. *See* 20 C.F.R. § 404.1529(c)(3). If the ALJ’s finding is
 23 supported by substantial evidence, the court may not engage in second-guessing. *Tommasetti*, 533
 24 F.3d at 1039 (citations and internal quotation marks omitted).

25 The clear and convincing standard is “not an easy requirement to meet,” as it is “the most
 26 demanding requirement in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th
 27 Cir. 2014) (*quoting Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). “A
 28 finding that a claimant’s testimony is not credible must be sufficiently specific to allow a reviewing
 court to conclude the adjudicator rejected the claimant’s testimony on permissible grounds and did
 not arbitrarily discredit a claimant’s testimony regarding pain.” *Brown-Hunter v. Colvin*, 806 F.3d
 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

1 “The fact that a claimant’s testimony is not fully corroborated by the objective medical
 2 findings, in and of itself, is not a clear and convincing reason for rejecting it.” *Vertigan*, 260 F.3d
 3 at 1049. *See* 20 C.F.R. § 404.1529(c)(2) (“[W]e will not reject your statements about the intensity
 4 and persistence of your pain or other symptoms or about the effect your symptoms have on your
 5 ability solely because the objective medical evidence does not substantiate your statements.”).
 6 Rather, where a claimant’s symptom testimony is not fully substantiated by the objective medical
 7 record, the ALJ must provide additional reasons for discounting the testimony. *Burch v. Barnhart*,
 8 400 F.3d 676, 680 (9th Cir. 2005). “The ALJ must specify what testimony is not credible and
 9 identify the evidence that undermines the claimant’s complaints – ‘[g]eneral findings are
 10 insufficient.’” *Id.* (quoting *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998)).

11 However, the medical evidence “is still a relevant factor in determining the severity of the
 12 claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).
 13 The Court of Appeals has distinguished testimony that is “uncorroborated” by the medical evidence
 14 from testimony that is “contradicted” by the medical records and concluded that contradictions with
 15 the medical records, by themselves, are enough to meet the clear and convincing standard.
 16 *Hairston v. Saul*, 827 Fed. Appx. 772, 773 (9th Cir. 2020) (quoting *Carmickle*, 533 F.3d at 1161).

17 2. Parties’ Contentions

18 Plaintiff argues the ALJ’s RFC determination is unsupported by substantial evidence
 19 because the ALJ failed to consider the impact of all of Plaintiff’s subjective symptomology
 20 testimony. (Doc. 17 at 12). Plaintiff argues the ALJ improperly discounted his pain testimony in
 21 relying on objective findings and improperly finding his treatment for knee pain was conservative.
 22 (*Id.* at 11). Plaintiff argues the ALJ improperly discounted his mental health allegations by
 23 erroneously classifying his mental health treatment as conservative and failing to show any of
 24 Plaintiff’s improvements to his mental health symptoms “was sustained as opposed to temporary.”
 25 (*Id.* at 12). Finally, Plaintiff argues the ALJ erroneously found his daily living activities
 26 inconsistent with his alleged limitations. (*Id.*).

27 Defendant argues the ALJ reasonably found Plaintiff’s symptomology testimony unreliable
 28 and substantial evidence supports his assessment. (Doc. 20 at 8). Defendant contends the ALJ

1 discounted Plaintiff's testimony because: (1) the testimony is contradicted by the objective medical
2 evidence; (2) Plaintiff's pain treatment was relatively conservative; (3) Plaintiff's mental health
3 treatment history is lacking; (4) Plaintiff was noncompliant with treatment; (5) Plaintiff experienced
4 improvements in mental health symptoms with treatment; (6) Plaintiff's activities of daily living
5 were inconsistent with his alleged limitations; and (7) Plaintiff's statements were inconsistent as to
6 functioning. (*Id.* at 9-14).

7 In reply, Plaintiff contends the ALJ's "summary of cherry-picked benign findings is not
8 sufficient to discredit" his testimony because "symptoms cannot be discounted merely because they
9 are unsupported by objective medical evidence." (Doc. 21 at 4). Plaintiff contends the ALJ's
10 reliance upon isolated examples that are not consistent with the overall record falls short of
11 establishing a "clear and convincing" reason to discount his testimony. (*Id.*).

12 3. Analysis

13 The ALJ found that Plaintiff's severe medical impairments—degenerative joint disease of
14 the right knee, obesity, depression, and anxiety—significantly limit him from performing basic
15 work activities. (AR 27 ¶ 3). The ALJ summarized Plaintiff's subjective symptom testimony from
16 the hearing:

17 [Plaintiff] alleged limitations from knee problems, obesity, anxiety, and depression
18 with symptoms including pain, stiffness, sadness, crying spells, isolative behavior,
19 frustration, nervousness, and panic attacks with chest pain, with panic attacks
20 occurring twice a week and worse pain with standing or sitting too long. He
21 claimed he has never worked for more than a few days due to knee pain. He
22 reported he would not be able to climb stairs without pain. [He] testified he is 5 feet
23 and 10 inches tall, noting he weighs 381 pounds. He reported he has gained weight
24 due to his right knee problems. [He] alleged he has difficulty concentrating,
including when reading. He stated he talks with his mother, but indicated he
otherwise does not have family or friends with whom he talks. [He] estimated he is
able to stand in one spot for a minute before needing to sit down due to pain, sit for
no more than 10 to 20 minutes, and lift a gallon of milk.

25 (AR 31). After finding that Plaintiff's impairments could reasonably be expected to cause his
26 alleged symptoms, the ALJ concluded that Plaintiff's statements concerning the intensity,
27 persistence, and limiting effects of his symptoms are not entirely consistent with the record. (AR
28 31-32); *see Treichler*, 775 F.3d at 1103 (noting that ALJs "routinely include this [boilerplate]

1 statement in their written findings as an introduction ... before [identifying] what parts of the
2 claimant's testimony were not credible and why.”).

3 Here, in discounting Plaintiff’s testimony, the ALJ relied on the following: (1) Plaintiff’s
4 statements were inconsistent with the objective medical evidence, conservative treatment, and
5 treatment history; and (2) Plaintiff’s daily activities purportedly were inconsistent with his alleged
6 limitations. (AR 32-35).

7 (a) Plaintiff’s inconsistent statements as to Plaintiff’s conservative pain
8 treatment are a clear and convincing reason to reject Plaintiff’s
9 symptomology testimony.

10 As to Plaintiff’s alleged knee pain, the ALJ recited record findings, including “objective
11 physical examination findings” to show they “do not support the level of limitation alleged[.]” (AR
12 32) (Plaintiff “presented with normal strength, tone, reflexes, and sensation”; “often had a normal
13 gait”; “[h]e presented with no acute distress”; “had normal range of motion upon examination”).
14 However, the ALJ also cited to records that substantiate Plaintiff’s alleged limitations, including
15 that Plaintiff “reported subjective pain upon palpitation or range of motion testing of the right knee”
16 and to various records describing Plaintiff’s limitations to the knee. (AR 32) (“he had a slight limp
17 favoring the right side”; “[he] had an atalgic gait with valgus, swelling, tension, an abnormal range
18 of motion upon examination of the knee[.]”). “The fact that a claimant’s testimony is not fully
19 corroborated by the objective medical findings, in and of itself, is not a clear and convincing reason
20 for rejecting it.” *Vertigan*, 260 F.3d at 1049.

21 Defendant next argues that the ALJ properly discounted Plaintiff’s testimony because it is
22 “contradicted by medical evidence.” (Doc. 20 at 9). That Plaintiff’s allegations of pain in “standing
23 or sitting too long” or “climbing stairs” or could not work for “more than a few days due to knee
24 pain” are somehow contradicted because records show he generally appeared “with no acute
25 distress” at routine follow-ups or “often had normal gait” and “ambulated without assistance” is
26 unfounded. Indeed, courts have rejected an ALJ’s reliance on cherry-picked statements in the
27 medical record of acute distress while ignoring statements in those same notes describing chronic
28 pain. *Hernandez v. Comm’s of Soc. Sec.*, No. 1-22-cv-00188-CDB, 2024 WL 3470855, at *5 (E.D.

Cal. July 18, 2024); *accord Toni D. v. Saul*, No. 3:19-cv-820-SI, 2020 WL 1923161, at *6 (D. Or. Apr. 21, 2020) (“the generic chart note of ‘no acute distress’ is not a clear and convincing reason to discount Plaintiff’s symptom testimony”); *Barbara P. v. Kijakazi*, No. 2:20-cv-00326-MKD, 2021 WL 4295745, at *7 (E.D. Wash. Sep. 21, 2021) (“In repeatedly citing a brief, generic chart note as one of the few reasons to reject Ms. Witte’s opinions, the ALJ mischaracterized the record. The longitudinal treatment record shows more mixed results, and by not analyzing relevant findings within the same treatment notes, the ALJ’s characterization of the record is not supported by substantial evidence.”); *Troy A. H. v. Comm’s of Soc. Sec.*, No. 6:20-cv-01228-YY, 2022 WL 336846, at *5 (D. Or. Feb. 4, 2022) (“[T]he ALJ selectively relied upon notes indicating ‘no acute distress’ while ignoring plaintiff’s subjective complaints of pain and gastrointestinal distress accompanied by objective exam findings of abdominal tenderness within the same exam.”). The ALJ failed to show or explain why these general findings contradict Plaintiff’s pain testimony. Thus, the ALJ failed to offer a clear and convincing reason to discount Plaintiff’s credibility on this basis.

The ALJ next discounts Plaintiff’s pain testimony because the “record demonstrates relatively conservative treatment.” (AR 32) (“[T]he record does not demonstrate that surgery has been performed or recommended”; “[t]he record does not document recent or recurrent emergency room evaluations due to uncontrolled pain”; “[t]here is no evidence that [Plaintiff] required narcotic pain medication” or “received knee injections” or the “use of or a prescription for an assistive device to aid ambulation[.]”). The Court agrees. Though the record shows Plaintiff briefly participated in physical therapy and wore a knee brace in September and November 2019, Plaintiff’s treatment of his knee pain consisted primarily of conservative modalities. Plaintiff was not recommended surgery given he “was not a good surgical candidate” and instead, he was advised to “lose weight to reduce pain and prevent arthritis.” (AR 32). There is no evidence Plaintiff received injections for his knee pain or use of narcotic pain medication. Thus, the ALJ’s finding that Plaintiff’s testimony was inconsistent with his conservative treatment is a clear and convincing reason to reject that testimony. *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995) (“[E]vidence of conservative treatment is sufficient

to discount a claimant's testimony regarding [the] severity of an impairment."); *Shepard v. Colvin*, No. 1:14-cv-1166-SMS, 2015 WL 9490094, at *7 (E.D. Cal. Dec. 30, 2015) ("[p]rior cases in the Ninth Circuit have found that treatment was conservative when the claimant's pain was adequately treated with over-the-counter medication and other minimal treatment[.]"); *accord Teresa Marie C. Kijakazi*, 2023 3564939, at *5 (S.D. Cal. Mar. 28, 2023) ("The record here establishes Plaintiff's back and knee pain was managed with medication and a single administration of bilateral knee injections ... supporting the ALJ's finding that Plaintiff's treatment was conservative."); *Walter v. Astrue*, No. 09-CV-1569-AGR, 2011 WL 1326529, at *3 (C.D. Cal. Apr. 6, 2011) (ALJ permissibly discredited claimant's allegations of low back and knee pain based on conservative treatment consisting of Vicodin, physical therapy, and a steroid injection).

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(b) Plaintiff's purported inconsistent statements with respect to Plaintiff's mental health treatment and history are not a clear and convincing reason to reject his symptomology testimony.

As noted above, the ALJ mischaracterized Plaintiff's mental health treatment as conservative such that the ALJ improperly rejected symptomology testimony on this basis.

The ALJ also discredits Plaintiff's mental health symptomology testimony because he often declined referrals to psychiatry or behavioral health care and there was no evidence of emergent care visits due to his anxiety or depression. (AR 35). However, Plaintiff explained "he was not ready" for this specialized psychiatric or behavioral health care due to his anxiety, and the ALJ noted Plaintiff sought emergency care visits for panic attacks on two occasions. (AR 35, 434, 444, 494). Thus, the ALJ erred in discrediting Plaintiff's testimony on this basis. *Garrison*, 759 F.3d at n.24 ("[I]t is a questionable practice to chastise one with a mental impairment for the exercise of poor judgment in seeking rehabilitation.") (citing *Nguyen v. Chater*, 100 F.3d 1462, 1495 (9th Cir. 1996)).

The ALJ separately discredits Plaintiff's symptomology testimony because the record demonstrates he reported improvements in mental health symptoms with treatment, including with

1 medication and adjustments to his medication regimen. (AR 34-35). However, the fact that
 2 Plaintiff obtained some relief from mental health symptoms through use of prescription medications
 3 is not a proper ground upon which the ALJ may discount Plaintiff's credibility or reject his
 4 symptomology testimony. The Social Security Administration regulations provide that in
 5 evaluating the intensity and persistence of symptoms and determining the extent they limit a
 6 claimant's capacity to work, a relevant factor to consider is "[t]he type, dosage, effectiveness, and
 7 side effects of any medication you take or have taken to alleviate your pain or other symptoms."
 8 20 C.F.R. § 404.1529(c)(3)(iv). Thus, the use of prescription medications to manage but not
 9 eliminate mental symptoms should be considered by the ALJ as a limiting factor in the residual
 10 functional capacity. Defendant cites no authority that the use of prescription psychotropic
 11 medications to regulate but not eradicate a mental health disorder or its symptoms should be used
 12 to discount a claimant's symptoms. *Cf. Donald R. F. v. Saul*, No. 5:18-00158 ADS, 2019 WL
 13 7938245, at *5 (C.D. Cal. Sept. 12, 2019) (rejecting similar "reported improvement with
 14 medication" argument as basis for discounting symptomology testimony); *see Attmore v. Colvin*,
 15 827 F. 3d 872, 878 (9th Cir. 2016) (citing *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir.
 16 2001) ("That a person who suffers from severe panic attacks, anxiety, and depression makes some
 17 improvement does not mean that the person's impairments no longer seriously affect her[.]")).

18 (c) Plaintiff's activities of daily living (ADL) do not provide a clear and
 19 convincing reason to reject his symptomology testimony.

20 An ALJ may reject a claimant's subjective symptom testimony if it is inconsistent with the
 21 claimant's activities of daily living. *Tommasetti*, 533 F.3d at 1039. There are two grounds on
 22 which an ALJ may use a claimant's daily activities to question a claimant's credibility as to her
 23 subjective symptoms: (1) when daily activities demonstrate the claimant has transferable work
 24 skills, and (2) when daily activities contradict the claimant's testimony as to the degree of functional
 25 limitation. *Orn*, 495 F.3d at 639. However, "disability claimants should not be penalized for
 26 attempting to lead normal lives in the face of their limitations." *Reddick*, 157 F.3d at 722; *see*
 27 *Smolen*, 80 F.3d at 1284 n.7 ("The Social Security Act does not require that claimants be utterly
 28 incapacitated to be eligible for benefits, and many home activities may not be easily transferable to

1 a work environment where it might be impossible to rest periodically or take medication.”). “The
2 mere fact that a plaintiff has carried on with certain daily activities, such as grocery shopping,
3 driving a car, or limited walking for exercise, does not in any way detract from [their] credibility[.]”
4 *Webb v. Barnhart*, 433 F.3d 683, 688 (9th Cir. 2005) (quoting *Vertigan*, 260 F.3d at 1050).
5 Regarding mental health issues, “[c]ycles of improvement and debilitating symptoms are a common
6 occurrence,” and an ALJ errs by “pick[ing] out a few isolated instances of improvement over a
7 period of months or years and [] treat[ing] them as a basis for concluding a claimant is capable of
8 working.” *Garrison*, 759 F.3d at 1017.

9 Here, Defendant does not argue whether Plaintiff’s activities demonstrate he has
10 transferrable work skills or an ability to sustain work. Instead, Defendant argues Plaintiff’s alleged
11 limitations in doing certain activities is inconsistent with Plaintiff’s other identified activities. The
12 ALJ noted as inconsistent Plaintiff’s testimony that “fatigue occasionally affected his ability” in
13 preparing meals by noting Ms. Sanchez’s report that “he prepared simple meals daily, indicating
14 there had been no change in his cooking habits since the onset of his conditions.” (AR 35).
15 However, the mere fact that Plaintiff was able to carry on with preparing meals despite occasional
16 fatigue does not detract from the credibility of his testimony. *Webb*, 433 F.3d at 688. Moreover,
17 Defendant fails to show how Plaintiff taking showers is inconsistent with his testimony that he has
18 pain in doing so. Nor is the Court persuaded it is inconsistent that Plaintiff could shop in stores,
19 handle money, and drive while claiming he could not concentrate due to anxiety. The ALJ therefore
20 failed to adequately explain how Plaintiff’s described activities of daily living conflict with his
21 alleged limitations or demonstrate his ability to work. *See, e.g., Wilson v. Comm’r of Soc. Sec.*
22 *Admin.*, 303 Fed. Appx. 565, 566 (9th Cir. 2008) (finding a plaintiff’s occasional driving does not
23 render him able to work); *Vertigan*, 260 F.3d at 1050 (finding “only a scintilla of evidence in the
24 record to support the ALJ’s finding that [plaintiff] lacked credibility about her pain and physical
25 limitations” where the ALJ relied on Plaintiff’s ability to go “grocery shopping with assistance,
26 walk approximately an hour in the malls, get together with her friends, play cards, swim, watch
27 television, ... read.... [and participate in] physical therapy for six months and exercise[] at home.”);
28 *Costa v. Berryhill*, 700 Fed. Appx. 651, 653 (9th Cir. 2017) (“The ability to accomplish daily tasks

irregularly does not necessarily equate with an ability to work.”). Thus, the Court cannot ascertain which of Plaintiff’s symptom testimony the ALJ properly rejected based on the ADL evidence, or why. *See, e.g., Isis A. v. Saul*, No. 18cv01728-W-MSB, 2019 WL 3554969, at *6 (S.D. Cal. Aug. 5, 2019) (“Because the ALJ did not identify any actual inconsistency in his opinion or describe his reasoning, the Court cannot ascertain which of Plaintiff’s symptom and pain testimony the ALJ rejected based on the ADL evidence.”) (citing *inter alia Holohan*, 246 F.3d at 1208. For these reasons, the ALJ did not identify a specific, clear, and convincing reason for discrediting Plaintiff’s symptom testimony when he did not explain how those ADLs either contradicted Plaintiff’s testimony or equaled transferable work skills.

* * * * *

In sum, the ALJ failed to properly consider the supportability and consistency of Dr. Seward’s medical opinion before finding it not persuasive such that remand is warranted to address this legal error. Further, the ALJ failed to include work-related limitations in the RFC consistent with the nature and intensity of Plaintiff’s alleged mental health limitations in improperly rejecting his subjective symptomology testimony. While an ALJ’s error may be harmless where he provides valid reasons for disbelieving a claimant’s testimony in addition to invalid reasons (*Molina*, 674 F.3d at 1115 (citing cases)), here, the ALJ provided no valid reasons for rejecting Plaintiff’s mental symptomology testimony. Accordingly, the error is not harmless.

C. Request for Remand

Plaintiff seeks to remand. (Doc. 17 at 13). Defendant contends that should the Court find the ALJ’s findings are not supported by substantial evidence and are reversible legal error, the Court should remand for further proceedings. (Doc. 20 at 15). “The decision whether to remand for further proceedings or simply to award benefits is within the discretion of court.” *Trevizo*, 871 F.3d at 682 (*quoting Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). “Remand for further administrative proceedings is appropriate if enhancement of the record would be useful.” *Benecke v. Barnhart*, 379 F.3d 587, 593 (emphasis omitted) (9th Cir. 2004).

In this case, the ALJ erred by failing to properly consider the supportability and consistency of Dr. Seward’s opinion before finding it unpersuasive, failing to offer clear and convincing reasons

1 to reject Plaintiff's mental health symptomology testimony, and failing to sufficiently explain how
2 Plaintiff's activities of daily living undermine his alleged limitations. Given these errors, the Court
3 concludes that remand for further proceedings is warranted because additional administrative
4 proceedings may remedy the deficiencies in the ALJ's decision noted herein.

5 **IV. CONCLUSION AND ORDER**

6 For the reasons set for above, the Court finds the ALJ erred in evaluating opinions in the
7 record and failed to apply the proper legal standards. Accordingly, IT IS HEREBY ORDERED
8 that:

- 9 1. Plaintiff's motion to vacate and remand (Doc. 17) is **GRANTED**;
- 10 2. The decision of the ALJ (Doc. 12) is **REVERSED**;
- 11 3. This matter is **REMANDED** pursuant to sentence four of 42 U.S.C. §405(g) for
12 further proceedings consistent with this decision; and
- 13 4. The Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff Angel
14 Cabral and against Defendant Commissioner of Social Security.

15 IT IS SO ORDERED.

16 Dated: March 12, 2025

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UNITED STATES MAGISTRATE JUDGE